IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9358 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHCHANDRA NEMICHAND

Versus

DEPUTY SECRETARY

Appearance:

1. Special Civil Application No. 9358 of 1993

MS MEENA VYAS for MR DM AHUJA for Petitioner No. 1

MR HL JANI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 01/04/2004

ORAL JUDGEMENT

By this petition under Article 226 and 227 of the Constitution of India, the petitioner has challenged the order dated 18th August, 1998, made by the Deputy Secretary, Food and Civil Supplies Department, Government of Gujarat, in Appeal No. 531 of 1991, whereby the order

of the Collector dated 14th August, 1991 to confiscate 331 quintals of wheat worth Rs. 99,300/- was modified to the extent of reducing the penal effect to 10% of the original order.

It was pointed out by the learned Counsel for the petitioner that, while deciding the appeal, the Appellate Authority had accepted all the factual and legal contentions of the petitioner and expressly held that the violation of the provisions of the applicable Gujarat Essential Articles Dealers (Regulation) Order, 1977 were only of technical nature and that too were only partly proved. It was on that basis submitted that the impugned order to confiscate even 33 quintals of wheat worth Rs. 9,900/- could not be sustained.

It was also pointed out that admittedly the Control Order of 1981, under which the actions were purported to have been taken, was not applicable in the facts of the case and by the Gujarat Essential Articles (Licensing, Control and Stock) (Declaration) (Amendment) Order, 1986, "wheat" was deleted from the list of "foodgrains including products thereof" in Part-I of Schedule I of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981.

The learned AGP Mr. Jani fairly conceded that the present case is squarely covered by the decision of the Hon'ble Supreme Court in N. Nagendra Rao & Co. Vs. State of Andhra Pradesh, reported in AIR 1994 SC 2663. It has been held by the Hon'ble Supreme Court in paragraph 5 of the judgement that "..... it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word "may". A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock".

The judgement of this Court in M.D. Agency Vs. State of Gujarat, reported in 1997 (1) GLH 768 was also referred to in support of the proposition that when the petitioner had a licence to stock and sell the commodity and had not committed any breach of the condition of the

licence issued to him for the essential commodity, the Department had no authority to seize the goods and then to pass further order of confiscating the said goods in toto or in percentage.

It was seen that, in the facts of the present case, actions against the petitioner were taken and show cause notice was issued alleging violation of the Control Order, 1981, whereas at the end of the Appellate proceedings, he was held responsible for technical violation of the Gujarat Essential Articles Dealers (Regulation) Order, 1977, as stated hereinabove. In these facts and circumstances, the impugned order appears to be arbitrary, without application of mind and not sustainable in law. Therefore, the petition is allowed and the impugned order dated 18th August, 1993 in Appeal No. 531 of 1991 as also the original confiscation order dated 14.8.1991 of the Collector are set aside. The Bank guarantee in the sum of Rs. 10,000/- required to be furnished by the petitioner under the order of interim relief granting stay against implementation of the impugned order shall stand discharged, if such Bank guarantee was furnished by the petitioner. Rule is made absolute accordingly with no order as to costs.

(D.H. Waghela, J.)

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